United Nations S/2012/1

Security Council

Distr.: General
5 January 2012
English
Original: Arabic

Identical letters dated 3 January 2012 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

Continuing our practice of periodically updating you on the most important events and developments in Syria, we should like to draw your attention to the fact that the Syrian leadership has spared no effort, ever since the current crisis began in Syria, to respond to valid popular demands, and that it promptly did everything in its power to adopt a comprehensive reform programme that is based on strengthening the national democratic structure, widening citizen participation in political and economic life, entrenching national unity, and ensuring public order, the security of the nation and the population, the stability of the country and the rule of law. Against that background, a number of measures have been taken with the aim of ensuring that Syrian citizens play the greatest possible part in that programme, in an atmosphere of tolerance and openness to all, including those who have made mistakes or perpetrated illegal acts, excluding involvement in acts of murder during the recent events, in order to empower them to desist from expressing themselves through acts of violence or law-breaking and become involved in the process of national construction. Since the unfortunate events began in the country in March 2011, His Excellency Bashar Al-Assad, President of the Syrian Arab Republic, has promulgated three legislative decrees which provided a general amnesty for prisoners that encompassed all detainees who were adherents of political factions. Furthermore, the Ministry of Internal Affairs issued several proclamations in which it announced that all persons who had been led astray and taken part in or been responsible for acts that are punishable by law, including security violations and the bearing of arms, and who gave themselves up to the authorities, would be pardoned, provided they had not committed the crime of murder. In addition, the Syrian authorities released detainees who had not been involved in recent events and on whose hands there was no blood. Set forth below is a list of the aforementioned measures:

1. Presidential legislative decrees concerning a general amnesty:

   - On 7 March 2011, His Excellency Bashar Al-Assad, President of the Syrian Arab Republic, promulgated legislative decree No. 34, which granted a general amnesty for all crimes committed before 7 March 2011.

   - On 31 May 2011, His Excellency Bashar Al-Assad, President of the Syrian Arab Republic, promulgated legislative decree No. 61, which granted a general

Please recycle

amnesty for all crimes committed before 31 March 2011. Included in that amnesty were all detainees who were adherents of political factions, and half penalties for felonies, provided no personal claim was involved.

- On 20 June 2011, His Excellency Bashar Al-Assad, President of the Syrian Arab Republic, promulgated legislative decree No. 72, which granted a general amnesty for all crimes committed before 20 June 2011.

2. Freeing of detainees

- On 5 November 2011, 553 detainees were released who had been involved in the events, but on whose hands there was no blood.
- On 15 November 2011, a total of 1,180 detainees were released who had been involved in the events, but on whose hands there was no blood.
- On 30 November 2011, a further 912 detainees were released who had been involved in the events, but on whose hands there was no blood.
- On 28 December 2011, 755 detainees were released who had been involved in the recent events in Syria, but on whose hands there was no blood.

3. Ministry of the Interior proclamations

- On 1 March 2011, the Ministry of the Interior issued a proclamation in which it announced that all persons who had been led astray and taken part in or been involved in acts that are punishable by law, including security violations and the bearing of arms, or who had made misleading statements, and who surrendered themselves and their weapons to the proper authorities before 15 March 2011, that date later being extended to 22 March 2011, and provided information on the wreckers and terrorists and places where there were arms, would be pardoned and free of all legal consequences. In various governorates, a total of 8,881 persons who had been involved in the disturbances surrendered themselves and were released once they had given their word that they would take no further part in any act that was detrimental to the security of the country or the citizens.
- On 4 November 2011, the Ministry of the Interior issued a proclamation in which it called upon all citizens who were in possession of arms, or who had sold, distributed, transported or purchased or funded the purchase of arms, but who had not committed any murders, to surrender themselves and their arms to the authorities between 5 and 12 November 2011. They would then be immediately released and granted a general amnesty.

It would be highly appreciated if the present letter could be circulated as a document of the Security Council.

(*Signed*) Bashar **Ja'afari**
Ambassador
Permanent Representative

United Nations S/2012/2

Security Council

Distr.: General
3 January 2012

Original: English

Note by the President of the Security Council

Pursuant to paragraph 4 (b) of the note by the President of the Security Council dated 30 October 1998 (S/1998/1016), and after consultations among the members of the Council, it was agreed to elect the Chairmen and Vice-Chairmen of subsidiary bodies for the period ending 31 December 2012 as follows:

Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

Chairman:
Hardeep Singh Puri (India)

Vice-Chairmen: Pakistan and Togo

Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities

Chairman:
Peter Wittig (Germany)

Vice-Chairmen: Guatemala and Russian Federation

Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Chairman:
Hardeep Singh Puri (India)

Vice-Chairmen: France, Morocco and Russian Federation

Security Council Committee established pursuant to resolution 1518 (2003)

Chairman:
Kodjo Menan (Togo)

Vice-Chairman: India

12-20093 (E) 040112

Please recycle

Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia

Chairman:
Abdullah Hussain Haroon (Pakistan)

Vice-Chairmen: Portugal and South Africa

Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

Chairman:
Agshin Mehdiyev (Azerbaijan)

Vice-Chairmen: Morocco and Pakistan

Security Council Committee established pursuant to resolution 1540 (2004)

Chairman:
Baso Sangqu (South Africa)

Vice-Chairmen: Azerbaijan, Portugal and United Kingdom of Great Britain and Northern Ireland

Security Council Committee established pursuant to resolution 1572 (2004) concerning Côte d'Ivoire

Chairman:
Gert Rosenthal (Guatemala)

Vice-Chairmen: Germany and South Africa

Security Council Committee established pursuant to resolution 1591 (2005) concerning the Sudan

Chairman:
Néstor Osorio (Colombia)

Vice-Chairmen: Azerbaijan and India

Security Council Committee established pursuant to resolution 1636 (2005)

Chairman:
Kodjo Menan (Togo)

Vice-Chairmen: Azerbaijan and Germany

Security Council Committee established pursuant to resolution 1718 (2006)

Chairman:
José Filipe Moraes Cabral (Portugal)

Vice-Chairmen: Azerbaijan and Togo

Security Council Committee established pursuant to resolution 1737 (2006)

Chairman:
Néstor Osorio (Colombia)

Vice-Chairman: Togo

Security Council Committee established pursuant to resolution 1970 (2011) concerning Libya

Chairman:
José Filipe Moraes Cabral (Portugal)

Vice-Chairman: India

Security Council Committee established pursuant to resolution 1988 (2011)

Chairman:
Peter Wittig (Germany)

Vice-Chairmen: Guatemala and Russian Federation

Working Group on Peacekeeping Operations

Chairman:
Mohammed Loulichki (Morocco)

Ad Hoc Working Group on Conflict Prevention and Resolution in Africa

Chairman:
Baso Sangqu (South Africa)

Working Group established pursuant to resolution 1566 (2004)

Chairman:
Hardeep Singh Puri (India)

Working Group on Children and Armed Conflict

Chairman:
Peter Wittig (Germany)

Informal Working Group on Documentation and Other Procedural Questions

Chairman:
José Filipe Moraes Cabral (Portugal)

Informal Working Group on International Tribunals

Chairman:
Gert Rosenthal (Guatemala)

United Nations S/2012/3

Security Council

Distr.: General
5 January 2012

Original: English

Letter dated 29 December 2011 from the Chair of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, containing an account of the activities of the Committee from 1 January to 31 December 2011 (see annex). The report, which was adopted by the Committee, is being submitted in accordance with the note by the President of the Security Council of 29 March 1995 (S/1995/234).

In this connection, I would appreciate it if the present letter and its annex were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Maria Luiza Ribeiro **Viotti**
Chair

12-20152 (E) 100112

Please recycle

Annex

Report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo

A. Introduction

1. The present report of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo covers the period from 1 January to 31 December 2011.

2. In 2011, the Bureau of the Committee consisted of Maria Luiza Ribeiro Viotti (Brazil) as Chair, with the delegations of Gabon and Lebanon serving as Vice-Chairs.

B. Background

3. By paragraph 20 of its resolution 1493 (2003), the Security Council imposed an arms embargo on all foreign and Congolese armed groups operating in the territory of North and South Kivu and Ituri. In addition, the Council requested the Secretary-General to report to the Council regularly on the movements and armed groups and on information concerning arms supply and the presence of foreign military, especially by monitoring the use of landing strips in North and South Kivu and Ituri.

4. By its resolution 1533 (2004), the Security Council established the Committee to undertake, inter alia, the following tasks: (a) to seek information from States regarding actions taken by them to implement the arms embargo; (b) to examine, and take appropriate action on, information concerning alleged violations; (c) to report to the Council on ways to strengthen the effectiveness of the arms embargo; (d) to consider a list of those found to have violated the measures imposed by the Council in its resolution 1493 (2003) with a view to submitting recommendations to the Council for possible future measures; and (e) to receive notifications in advance from States made under paragraph 21 of resolution 1493 (2003) and to decide, if need be, upon any action to be taken.

5. By paragraph 10 of its resolution 1533 (2004), the Security Council requested the Secretary-General, in consultation with the Committee, to establish a group of experts to monitor the arms embargo. The Group of Experts was re-established or extended for 12 successive mandates pursuant to resolutions 1552 (2004), 1596 (2005), 1616 (2005), 1654 (2006), 1698 (2006), 1771 (2007), 1799 (2008), 1807 (2008), 1857 (2008), 1896 (2009), 1952 (2010) and 2021 (2011).

6. By its resolution 1596 (2005), the Security Council extended the arms embargo to any recipient in the territory of the Democratic Republic of the Congo except the national army and police, among others, under the conditions set out in the resolution. The Council also imposed travel restrictions and an assets freeze on persons and entities acting in violation of the arms embargo. By the same resolution, the Council decided to provide the Group of Experts with a fifth finance expert so that it could fulfil the broader mandate entrusted to it in connection with the measures set out in paragraphs 6, 10, 13 and 15 of the resolution.

7. By its resolution 1616 (2005), the Council renewed the arms embargo, travel restrictions and assets freeze until 31 July 2006. By its resolution 1649 (2005), the Council extended the scope of the travel restrictions and assets freeze to political and military leaders of foreign armed groups operating in the Democratic Republic of the Congo and Congolese militias receiving support from abroad that impede the participation of their combatants in disarmament, demobilization and reintegration processes. The Council decided that those measures should take effect on 15 January 2006, unless the Secretary-General informed the Council that the process of disarmament of those foreign armed groups and Congolese militias operating in the Democratic Republic of the Congo was being completed.

8. By its resolution 1698 (2006), the Council renewed until 31 July 2007 the arms embargo, as well as the travel and financial restrictions on individuals designated by the Committee in accordance with the criteria set out in its resolutions 1596 (2005) and 1649 (2005). In its resolution 1698 (2006), the Council extended the travel and financial measures to political and military leaders recruiting or using children in armed conflict and to individuals committing serious violations of international law involving the targeting of children in situations of armed conflict. In addition to requesting the Group of Experts to carry out the tasks outlined in resolutions 1533 (2004), 1596 (2005) and 1649 (2005), the Council requested the Group to recommend feasible and effective measures that the Council might impose to prevent the illegal exploitation of natural resources financing armed groups. In paragraph 8 of its resolution 1698 (2006), the Council requested the Secretary-General to present before 15 February 2007, in close consultation with the Group of Experts, a report comprising an assessment of the potential economic, humanitarian and social impact on the population of the Democratic Republic of the Congo of the implementation of the possible measures referred to in paragraph 6 of the resolution.

9. By its resolution 1771 (2007), the Council decided to renew the measures on arms imposed under resolutions 1493 (2003) and 1596 (2005) until 15 February 2008. In connection with the arms embargo, the Council decided to renew the exemptions for units of the army and police of the Democratic Republic of the Congo, provided that the conditions specified in paragraph 2 of the resolution were met. In addition, in paragraph 3 of its resolution 1771 (2007), the Council decided to authorize an exemption for technical training and assistance agreed to by the Government of the Democratic Republic of the Congo and intended solely to support units of the national army and police that were in the process of integration in the provinces of North and South Kivu and in the Ituri district.

10. By paragraph 4 of its resolution 1771 (2007), the Council decided that the conditions specified in paragraph 4 of resolution 1596 (2005), as now applied to the Government of the Democratic Republic of the Congo, should apply to supplies of arms and related materiel as well as technical training and assistance that are consistent with the exemptions noted in paragraphs 2 and 3 of resolution 1771 (2007), and noted in that regard that States had an obligation to notify the Committee in advance of such supplies. The Council also decided to renew the measures on transport and travel and finance in accordance with resolutions 1596 (2005), 1649 (2005) and 1698 (2006), and to review, by no later than 15 February 2008, the measures concerning the arms embargo, transport, travel and financial bans, in the light of the consolidation of the security situation and the processes of integration of armed forces and reform of the national police in the Democratic Republic of the Congo.

11. By paragraph 1 of its resolution 1799 (2008), the Council decided to extend until 31 March 2008 the measures on arms imposed by paragraph 20 of resolution 1493 (2003) as amended and expanded by paragraph 1 of resolution 1596 (2005).

12. By paragraph 2 of its resolution 1807 (2008), the Council decided that the measures on arms and technical training should no longer apply to the Government of the Democratic Republic of the Congo. By paragraph 1 of the same resolution, the Council decided that, for a period ending on 31 December 2008, all States should take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related materiel, and the provision of any assistance, advice or training related to military activities, including financing and financial assistance, to all non-governmental entities and individuals operating in the territory of the Democratic Republic of the Congo. By paragraph 5 of the resolution, the Council reiterated the obligation of supplier States to notify the Committee of all shipments of arms and related materiel, as well as the provision of technical training and assistance to the Democratic Republic of the Congo. By paragraph 13 (e), the Council extended the travel and financial measures to individuals operating in the Democratic Republic of the Congo and committing serious violations of international law involving the targeting of children or women in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement.

13. By its resolution 1857 (2008), the Security Council decided to extend the sanctions regime for a further period expiring on 30 November 2009. By subparagraphs 4 (f) and (g) of the same resolution, the Council decided that the assets freeze and travel ban would also apply to individuals obstructing the access to or distribution of humanitarian assistance in the eastern part of the Democratic Republic of the Congo, as well as individuals or entities supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through the illicit trade in natural resources.

14. By subparagraphs 6 (a) and (b) of resolution 1857 (2008), the Council decided to expand the mandate of the Committee to include the following tasks: (a) to review regularly the list of individuals and entities subject to the travel ban and assets freeze and adopted by the Committee on 1 November 2005 with a view to keeping the list as updated and accurate as possible, to confirm that listing remains appropriate and to encourage Member States to provide any additional information whenever such information becomes available; and (b) to promulgate guidelines in order to facilitate the implementation of the measures imposed by the resolution and keep them under active review as may be necessary.

15. By its resolution 1896 (2009), the Security Council decided to extend, for a further period expiring on 30 November 2010, the sanctions regime. By paragraph 4 of the same resolution, the Council decided to expand the mandate of the Committee to include the following tasks: (a) to promulgate guidelines taking into account paragraphs 17 to 24 of resolution 1857 (2008) in order to facilitate the implementation of the measures imposed by resolution 1896 (2009); and (b) to specify the necessary information that Member States should provide in order to fulfil the notification requirement set out in paragraph 5 of resolution 1807 (2008) and to circulate this among Member States.

16. By paragraph 7 of resolution 1896 (2009), the Council also decided that the mandate of the Group of Experts should include the task to produce, taking into account paragraph 4 (g) of resolution 1857 (2008), drawing inter alia on their reports and taking advantage of work done in other forums, recommendations to the Committee for guidelines for the exercise of due diligence by the importers, processing industries and consumers of mineral products regarding the purchase, sourcing (including steps to be taken to ascertain the origin of mineral products), acquisition and processing of mineral products from the Democratic Republic of the Congo. By paragraph 8 of the same resolution, the Council requested the Group of Experts to focus its activities also on the Orientale Province, as well as on regional and international networks providing support to armed groups operating in the eastern part of the Democratic Republic of the Congo.

17. By paragraph 14 of resolution 1896 (2009), the Council called upon Member States to take measures to ensure that importers, processing industries and consumers of Congolese mineral products under their jurisdiction exercise due diligence on their suppliers and on the origin of the minerals they purchase.

18. By paragraph 16 of resolution 1896 (2009), the Council recommended that importers and processing industries adopt policies and practices, as well as codes of conduct, to prevent indirect support to armed groups in the Democratic Republic of the Congo through the exploitation of and trafficking in natural resources.

19. By paragraph 17 of resolution 1896 (2009), the Security Council recommended that Member States, particularly those in the Great Lakes region, regularly publish full import and export statistics for gold, cassiterite, coltan and wolframite.

20. By paragraphs 1 and 2 of its resolution 1952 (2010), adopted on 29 November 2010, the Security Council renewed until 30 November 2011 the measures on arms and transport imposed by paragraphs 1, 6 and 8 of resolution 1807 (2008). The Council also decided to renew, for the same period, the financial and travel measures imposed by paragraphs 9 and 11 of resolution 1807 (2008), and reaffirmed the provisions of paragraphs 10 and 12 of that resolution regarding the individuals and entities referred to in paragraph 4 of resolution 1857 (2008).

21. By paragraph 5 of resolution 1952 (2010), the Security Council requested the addition to the Group of Experts of a sixth expert, on natural resources issues. By paragraph 6 of the same resolution, the Council also requested that the Group focus its activities in areas affected by the presence of illegal armed groups, including North and South Kivu and Orientale Province, as well as on regional and international networks providing support to illegal armed groups, criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces, operating in the eastern part of the Democratic Republic of the Congo. It further requested the Group to evaluate the impact of the due diligence guidelines referred to in that resolution.

22. By paragraph 7 of resolution 1952 (2010), the Security Council supported taking forward the recommendations of the Group of Experts on guidelines for due diligence for importers, processing industries and consumers of Congolese mineral products, as set out in its final report of 29 November 2010 (S/2010/596), to mitigate the risk of further exacerbating the conflict in the eastern part of the Democratic Republic of the Congo by providing direct or indirect support to illegal

armed groups, those found to violate the assets freeze and travel ban on sanctioned individuals and entities, and criminal networks and perpetrators of serious violations of international humanitarian law and human rights abuses, including those within the national armed forces.

23. By paragraph 8 of resolution 1952 (2010), the Security Council called upon all States to take appropriate steps to raise awareness of the due diligence guidelines referred to in that resolution, and to urge importers, processing industries and consumers of Congolese mineral products to exercise due diligence by applying the aforementioned guidelines, or equivalent guidelines. By paragraph 9 of the same resolution, the Council decided that the Committee, in determining whether to designate an individual or entity supporting the illegal armed groups in the eastern part of the Democratic Republic of the Congo through the illicit trade in natural resources, should consider, among other things, whether the individual or entity has exercised due diligence consistent with the steps set out in the resolution.

24. By paragraph 19 of resolution 1952 (2010), the Council recommended that all States, particularly those in the region, regularly publish full import and export statistics for natural resources including gold, cassiterite, coltan, wolframite, timber and charcoal, and that they enhance information sharing and joint action at the regional level to investigate and combat regional criminal networks and armed groups involved in the illegal exploitation of natural resources.

25. By resolution 2021 (2011), the Security Council decided to renew until 30 November 2012 the measures on arms and transport, as well as the financial and travel measures imposed by resolution 1807 (2008), and reaffirmed the provisions of paragraphs 10 and 12 of that resolution regarding the individuals and entities referred to in paragraph 4 of resolution 1857 (2008). By paragraph 4 of the resolution, the Council requested the Group of Experts to fulfil its mandate as set out in paragraph 18 of resolution 1807 (2008) and expanded by paragraphs 9 and 10 of resolution 1857 (2008).

26. By paragraph 5 of resolution 2021 (2011), the Council reaffirmed paragraphs 6 to 13 of resolution 1952 (2010) regarding support for the illegal armed groups in the eastern part of the Democratic Republic of the Congo, impunity and the threat of criminal networks within the Armed Forces of the Democratic Republic of the Congo, and the mandate and activities, including information sharing, of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

27. By reaffirming paragraphs 6 to 13 of resolution 1952 (2010), the Security Council continued to support the taking forward of the recommendations of the Group of Experts on guidelines for due diligence for importers, processing industries and consumers of Congolese mineral products. Also by paragraph 5 of resolution 2021 (2011), the Council requested the Group of Experts to include in its evaluation of the impact of due diligence a comprehensive assessment on the economic and social development of the relevant mining areas in the Democratic Republic of the Congo.

28. By paragraph 6 of resolution 2021 (2011), the Security Council called on all States to assist the Democratic Republic of the Congo and the countries in the Great Lakes region in the implementation of the guidelines referred to above. By paragraph 7, the Council encouraged all States to continue to raise awareness of the

guidelines, in particular in the gold sector, as part of broader efforts to mitigate the risk of further financing armed groups and criminal networks within the Armed Forces of the Democratic Republic of the Congo.

29. By paragraph 8, the Council encouraged the Democratic Republic of the Congo and the States in the Great Lakes region to require their customs authorities to strengthen their control on exports and imports of minerals from the Democratic Republic of the Congo. By paragraph 9, the Council recommended that all States, particularly those in the region, enhance information sharing and joint action at the regional level to investigate and combat regional criminal networks and armed groups involved in the illegal exploitation of natural resources.

30. By paragraph 11 of resolution 2021 (2011), the Council encouraged the Government of the Democratic Republic of the Congo to urgently implement a national weapons marking programme. By paragraph 12, the Council also encouraged the Government of the Democratic Republic of the Congo to continue to address the underlying issue of the cohesion of the national army, including by further ensuring proper integration and vetting of former armed groups, in particular the Congrès national pour la défense du peuple, into the armed forces of the Democratic Republic of the Congo. By paragraph 14, the Council welcomed the efforts of the Congolese authorities to fight against impunity, including against perpetrators of human rights abuses and international humanitarian law violations, including sexual violence, and against those responsible for the illegal exploitation of natural resources, and encouraged their continuation. By paragraph 15, the Council stressed the importance of accountability for those responsible for war crimes and crimes against humanity and regional cooperation with the Government of the Democratic Republic of the Congo to this end.

C. Summary of the activities of the Committee

31. Over the course of 2011, the Committee carried out its regular mandate regarding the receipt and circulation of notifications conveyed by Member States, in pursuance of paragraph 5 of resolution 1807 (2008), receiving 20 such notifications. The Committee received 49 communications from Member States, circulated 18 notes to members of the Committee and issued 47 official communications.

32. On 21 January 2011, pursuant to a silence procedure, the Chair of the Committee addressed letters to the Permanent Missions of France and the Netherlands to inform them that the members of the Committee had no objections to the request by these countries for a travel exemption with a view to facilitating the travel of listed individual Callixte Mbarushimana to the International Criminal Court. On 22 March 2011, the Committee addressed similar letters to the Permanent Missions of the Democratic Republic of the Congo and the Netherlands with respect to the travel of listed individual Floribert Ngabu Ndjabu to The Hague.

33. The Committee held informal consultations on 8 March, 3 June, 16 November and 6 December 2011. On 8 March, the Group of Experts presented its workplan to the Committee, which in turn provided feedback. On 3 June, the Group presented to the Committee the main findings of its interim report (S/2011/345), submitted pursuant to resolution 1952 (2010). On 16 November, the Group presented to the Committee the main findings of its final report (S/2011/738), submitted pursuant to resolution 1952 (2010). During its meeting held on 6 December, the Committee

received a briefing by the Special Representative of the Secretary-General on Sexual Violence in Conflict, Margot Wallström.

34. On 11 July 2011, the Committee agreed to the Chair's proposal of establishing a new link on the Committee web page entitled "Group of Experts Due Diligence Guidelines",[1] located on the left-hand sidebar of the Committee web page.[2] The Chair's note, with hyperlinks to the Group's due diligence guidelines, Security Council resolutions 1896 (2009) and 1952 (2010), the Group's final 2010 report (S/2010/596) and the list of individuals and entities subject to the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005), was made available on the Committee web page in the six official languages of the United Nations.

35. On 15 July 2011, the Committee updated the list of individuals and entities subject to the measures imposed by paragraphs 13 and 15 of Security Council resolution 1596 (2005), as renewed by paragraph 3 of resolution 1952 (2010),[3] based on information contained in annex V of the interim report of the Group of Experts, dated 7 June 2011 (S/2011/345).

36. On 13 October 2011, the Committee added one individual (Jamil Mukulu) to the list.[4] On 29 November 2011, it added another individual (Ntabo Ntaberi Sheka) to the list.[5]

37. On 21 October 2011, the Chair transmitted to the members of the Committee a letter dated 21 October from the Coordinator of the Group of Experts conveying a comprehensive report on arms stockpile security in connection with paragraph 14 of resolution 1952 (2010). The aim of the report was to assist the Government of the Democratic Republic of the Congo in its efforts to promote stockpile security. At the request of the Group, the report was conveyed to the Permanent Mission of the Democratic Republic of the Congo to the United Nations.

38. During 2011, the Committee received five reports from Member States (Brazil, Colombia, Latvia, Serbia and the United Kingdom of Great Britain and Northern Ireland) pursuant to paragraph 20 of resolution 1952 (2010),[6] by which the Council called upon Member States to report to the Committee on the actions they had taken to implement the measures imposed by paragraphs 1, 2 and 3 of the resolution.

[1] http://www.un.org/sc/committees/1533/egroupguidelines.shtml.
[2] http://www.un.org/sc/committees/1533/.
[3] http://www.un.org/News/Press/docs/2011/sc10326.doc.htm.
[4] http://www.un.org/News/Press/docs/2011/sc10410.doc.htm.
[5] http://www.un.org/News/Press/docs/2011/sc10461.doc.htm.
[6] http://www.un.org/sc/committees/1533/reports.shtml.

United Nations S/2012/4

Security Council

Distr.: General
4 January 2012

Original: English

Letter dated 4 January 2012 from the Permanent Representative of Somalia to the United Nations addressed to the President of the Security Council

I have the honour to transmit herewith a letter from H.E. Dr. Abdiweli Mohamed Ali, Prime Minister of the Transitional Federal Government of the Somali Republic, dated 17 December 2011 (see annex).

I would very much appreciate it if the present letter and its annex could be circulated as a document of the Security Council.

(*Signed*) Elmi Ahmed **Duale**
Ambassador
Permanent Representative

12-20100 (E) 050112

Please recycle

Annex to the letter dated 4 January 2012 from the Permanent Representative of Somalia to the United Nations addressed to the President of the Security Council

The Transitional Federal Government of Somalia kindly requests that all United Nations Member States immediately support our Government's ban on the production of charcoal by prohibiting the importation of charcoal from Somalia. The Transitional Federal Government further requests that the Security Council consider imposing an international prohibition on the importation of charcoal from Somalia.

In December 2010, the Transitional Federal Government prohibited the production of charcoal throughout Somalia. This decision was announced publicly, and was later communicated to the International Contact Group on Somalia at its 29 September 2011 meeting in Copenhagen. The Transitional Federal Government implemented this measure because charcoal production not only destroys the environment and contributes to food insecurity, but also funds the deadly campaign being carried out by Al-Shabaab.

The charcoal trade has had a devastating effect on Somalia's environment, leading to massive deforestation in the country. This contributes to long-term food insecurity. Secretary-General Ban Ki-moon noted, in his October 2011 report on the protection of Somali natural resources and waters (S/2011/661), that illegal charcoal trading has put livelihoods at risk through the depletion of southern Somalia's primary forest cover, thus exacerbating the humanitarian crisis. The Secretary-General also rightly stated, in his speech at the Istanbul Conference on Somalia in May 2010, that some "make millions of dollars from destroying forests for charcoal to sell abroad". He correctly pointed out that such people will resist efforts to create stability in Somalia, which is why the commitment of the international community is essential. Ending the trade will not only greatly weaken Al-Shabaab, but also help save Somalia's natural environment from destruction. Our Government is confident that the loss of charcoal industry jobs will be minimal, and affected workers will move into other, less destructive employment, as they have in areas of the country where Al-Shabaab is not present.

The Al-Shabaab movement that terrorizes our population continues to benefit from the charcoal trade. According to the report of the Monitoring Group on Somalia and Eritrea pursuant to Security Council resolution 1916 (2010) of July 2011 (2/2011/433), Al-Shabaab earns an estimated $15 million annually from taxing the trade in charcoal, representing a significant percentage of its revenue. Given this important link, the Monitoring Group recommended that the Gulf Cooperation Council member States, which are the primary importers, consider imposing a ban on charcoal imports from Somalia. The United Nations and the international community have been supportive of our Government in fighting the scourge of Al-Shabaab, and the efforts have shown results, including the expulsion of Al-Shabaab from Mogadishu. Now is the time to put pressure on Al-Shabaab not only militarily, but also financially. Our Government's ban on the export of charcoal will not be fully effective unless other countries support us. Somali charcoal is largely exported to Gulf States; thus, these nations and the wider international community must cease imports of charcoal from Somalia in order for our efforts to have an impact.

There is precedent for such measures. The Security Council temporarily banned Member States from importing Liberian timber and diamonds that were fuelling regional instability, and it continues to ban imports of diamonds from Côte d'Ivoire. Such carefully targeted measures helped those countries on their paths towards peace and security, and we believe Somalia would benefit from a similar effort.

On behalf of the Transitional Federal Government, I formally request that all United Nations Member States be advised to stop purchasing charcoal from Somalia, in respect and support of our domestic ban on charcoal production. I further request that the Security Council consider a resolution prohibiting all United Nations Member States from making such purchases.

(*Signed*) Abdiweli Mohamed **Ali**
Prime Minister
Transitional Federal Government of Somalia

United Nations S/2012/5

Security Council

Distr.: General
6 January 2012

Original: English

Identical letters dated 3 January 2012 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

I write to again draw your attention to the continued terrorism emanating from the Gaza Strip, which places one million civilians in southern Israel under the constant spectre of violence. Last Sunday, 1 January 2012, two mortar shells containing white phosphorus were fired from Gaza at an Israeli farm in the area of Eshkol.

These attacks continue a dangerous trend. In the past month alone, more than forty rockets and mortars have been fired into southern Israel, landing in the areas of Ashkelon, Sha'ar HaNegev, Sdot Negev, Eshkol and Be'er Tuvia. In these attacks, rockets struck the town of Netviot and exploded in close proximity to the major cities of Be'er-Sheva and Ashkelon.

Israel holds the Hamas terrorist organization fully responsible for all attacks emanating from Gaza, where it remains in de facto control. Israel has exercised and will continue to exercise its right to self-defence, as appropriate, and will take all necessary measures to protect its citizens.

The situation in Gaza must be addressed with the utmost seriousness. Day after day, international law is flagrantly violated by the terrorists that operate with impunity in Gaza. In letter after letter, Israel has warned the international community about the dangerous potential for escalation. Yet, we still hear no words of condemnation from the Security Council. There has been no concerted effort in the international community to halt the fire of rockets into Israeli cities.

All responsible members of the international community have a duty to clearly and unequivocally condemn these attacks. The world must act now to prevent terrorism in Gaza from sparking even greater turmoil and conflict in the Middle East.

The Palestinian Authority also has a fundamental responsibility in this regard. Yet, Palestinian Authority President Abbas has still not clearly condemned these attacks. Instead of embracing Israel's call for direct negotiations, President Abbas continues to move closer into his embrace of the Hamas terrorist organization. Each rocket that flies out of Gaza is an unmistakable reminder that Hamas is far from renouncing violence or accepting any of the other Quartet principles, which any Palestinian Government must accept.

Please recycle

I should be grateful if you would have the present letter distributed as a document of the Security Council.

(*Signed*) Haim **Waxman**
Ambassador
Chargé d'affaires, a.i.

United Nations S/2012/6

Security Council

Distr.: General
5 January 2012

Original: English

Identical letters dated 1 January 2012 from the Permanent Representative of Pakistan to the United Nations addressed to the Secretary-General and the President of the Security Council

I have the honour to notify you that the Government of Pakistan would like to see the following items retained on the list of matters of which the Security Council is seized:

(a) The India-Pakistan question.

(b) The Hyderabad question.

(c) The situation in the India/Pakistan subcontinent.

I would be grateful if you would have the present letter circulated as a document of the Security Council.

(*Signed*) Abdullah Hussain **Haroon**
Ambassador
Permanent Representative

12-20140 (E) 050112

Please recycle

United Nations S/2012/7

Security Council

Distr.: General
5 January 2012

Original: English

Letter dated 4 January 2012 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council

I have the honour to transmit herewith the report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea (see annex), which contains an account of the Committee's activities during the period from 1 January to 31 December 2011. The report is submitted in accordance with the note by the President of the Security Council of 29 March 1995 (S/1995/234).

(*Signed*) H. S. **Puri**
Chair
Security Council Committee pursuant to resolutions 751 (1992)
and 1907 (2009) concerning Somalia and Eritrea

12-20592 (E) 130112

Please recycle

Annex

Report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

I. Introduction

1. The present report of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea covers the period from 1 January to 31 December 2011.

2. For 2011, the Bureau of the Committee consisted of H. S. Puri (India) as Chair, with the delegations of Lebanon and Nigeria providing the Vice-Chairs.

II. Background

3. By its resolution 733 (1992), the Security Council imposed a general and complete arms embargo on Somalia, and by its resolution 751 (1992), the Council established a Committee to oversee the implementation of the embargo. Subsequently, in its resolutions 1356 (2001), 1425 (2002), 1744 (2007), 1772 (2007), 1846 (2008), 1851 (2008) and 1916 (2010), the Council outlined certain exemptions to the embargo and further elaborated the scope of the measures.

4. By its resolution 1844 (2008), the Security Council decided that all Member States should take the necessary measures to prevent the entry into or transit through their territories of individuals designated by the Committee. The Council also decided that all Member States should freeze without delay the funds, other financial assets and economic resources owned or controlled, directly or indirectly, by the individuals or entities designated by the Committee. The Council reaffirmed the general and complete arms embargo against Somalia, including measures to prevent the supply of related training and financial and other assistance to designated individuals and entities.

5. By paragraph 8 of the same resolution, the Security Council mandated the Committee to designate individuals and entities: (a) engaging in or providing support for acts that threaten the peace, security or stability of Somalia; (b) having acted in violation of the general and complete arms embargo; and (c) obstructing the delivery of humanitarian assistance to Somalia, or access to, or distribution of, humanitarian assistance in Somalia. By its resolution 2002 (2011), the Council added to these criteria: (d) being political or military leaders recruiting or using children in armed conflicts in Somalia; and (e) being responsible for violations of international law involving the targeting of civilians, including children and women, in situations of armed conflict. The Committee was entrusted with, inter alia, the tasks of monitoring the implementation of the travel ban and assets freeze, with the support of the Monitoring Group; seeking from all Member States, in particular those in the region, information regarding the actions taken by them to implement effectively the travel ban and assets freeze; and reporting to the Council at least every 120 days on its work and on the implementation of resolution 1844 (2008).

6. On 12 April 2010, the Committee decided to list eight individuals and one entity to be subject to the travel ban, assets freeze and targeted arms embargo imposed under resolution 1844 (2008). On 28 July 2011, the Committee added two individuals to the list.

7. By resolution 2002 (2011), the Security Council decided to extend the mandate of the Monitoring Group referred to in paragraph 3 of resolution 1558 (2004), consisting of eight experts, for a period of 12 months, and expanded its mandate in line with recent resolutions.

8. On 23 December 2009, the Security Council adopted resolution 1907 (2009), by which it imposed a ban on the sale or supply to and from Eritrea of arms and related materiel, technical assistance and training. By the same resolution, the Council imposed an assets freeze, a travel ban and a targeted arms embargo on individuals and entities, including but not limited to the Eritrean political and military leadership, designated by the Committee as (a) violating the arms embargo; (b) providing support from Eritrea to armed opposition groups which aim to destabilize the region; (c) obstructing the implementation of resolution 1862 (2009) concerning Djibouti; (d) harbouring, financing, facilitating, supporting, organizing, training or inciting individuals or groups to perpetrate acts of violence or terrorist acts against other States or their citizens in the region; or (e) obstructing the investigations or work of the Monitoring Group. The Council further expanded the mandate of the Monitoring Group to monitor and report on the implementation of the measures imposed by resolution 1907 (2009).

9. As the Security Council, by resolution 1907 (2009), expanded the mandate of the Committee, it decided on 26 February 2010 to change the Committee's name to "Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea".

10. On 5 December 2011, the Security Council adopted resolution 2023 (2011) by which it expanded the restrictive measures for Eritrea in the area of "Diaspora tax", the Eritrean mining sector and financial services, and expanded the mandate of the Monitoring Group to monitor the implementation of those measures, and demanded that Eritrea make available information pertaining to Djiboutian combatants missing in action.

11. On 19 March 2010, the Security Council adopted resolution 1916 (2010), by which it decided, that for a period of 12 months, the assets freeze that it had imposed by paragraph 3 of resolution 1844 (2008) should not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia. By resolution 1972 (2011), adopted on 17 March 2011, the Council renewed that exemption for 16 months. By resolution 1916 (2010), the Council requested the United Nations Humanitarian Aid Coordinator for Somalia to report to it every 120 days on any impediments to the delivery of humanitarian assistance in Somalia. By resolution 1972 (2011), the Council requested the Emergency Relief Coordinator to report to it on the same issue by 15 November 2011 and 15 July 2012.

III. Summary of the Committee's activities

12. During 2011, the Committee met nine times in informal consultations (on 9 February, 11 March, 23 May, 15 July, 22 July, 27 July, 9 August, 13 September and 9 November). Furthermore, the Committee conducted a good amount of its work through written procedures.

13. On 9 February 2011, the Committee received a midterm briefing from the Coordinator of the Monitoring Group on Somalia and Eritrea, pursuant to paragraph 6 (j) of resolution 1916 (2010). In addition, the Special Representative of the International Criminal Police Organization (INTERPOL) to the United Nations introduced the work done by INTERPOL and the existing cooperation between it and the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities with regard to special notices.

14. During the informal consultations held on 11 March 2011, the Committee was briefed by the Deputy Director of the Coordination and Response Division of the Office for the Coordination of Humanitarian Affairs on the third 120-day report of the United Nations Resident and Humanitarian Coordinator for Somalia (S/2011/125), issued pursuant to paragraph 11 of resolution 1916 (2010).

15. On 23 May 2011, the Special Representative of the Secretary-General for Children and Armed Conflict briefed the Committee. As part of her briefing, she requested the inclusion of explicit and specific designation criteria for grave violations against children. In response to that request, the Council adopted, on 29 July 2011, resolution 2002 (2011), by which it added the recruitment and use of children as well as the targeting of civilians, including women and children, to the designation criteria for the measures imposed under resolution 1844 (2008). Furthermore, the Coordinator of the Monitoring Group provided an update of the Group's work.

16. On 15 July 2011, the Committee was briefed by the Coordinator of the Monitoring Group on the findings contained in the Group's final report (S/2011/433). The Committee also commenced its consideration of the Group's recommendations, which was continued on 9 August 2011.

17. During informal consultations on 22 July 2011, the Committee received a briefing by a delegation from Eritrea on the Monitoring Group's findings pertaining to Eritrea. The delegation announced that it would transmit a comprehensive response to the Group's report to the Committee, which it did on 20 October 2011. On 27 July, a delegation from Ethiopia briefed the Committee on the same matter.

18. The Coordinator of the Monitoring Group on Somalia and Eritrea informed the Committee on 13 September 2011 of the Group's workplan for its extended mandate.

19. During its informal consultations on 9 November 2011, the Committee considered the first report (S/2011/694) pursuant to paragraph 5 of resolution 1972 (2011). In that connection, the Committee heard a briefing by the Deputy Director of the Coordination and Response Division of the Office for the Coordination of Humanitarian Affairs.

20. On 15 March, 21 July and 16 November 2011, the Chair of the Committee briefed the Security Council during consultations on the Committee's activities during the previous 120 days, pursuant to paragraph 11 (g) of resolution 1844 (2008).

21. During the reporting period, the Committee approved 10 requests for exemptions to the arms embargo for non-lethal military equipment pursuant to paragraph 3 of resolution 1356 (2001) and 7 requests for exemptions to the arms embargo pursuant to paragraph 11 (b) of resolution 1772 (2007). The Committee also approved one notification in accordance with paragraph 4 (a) of resolution 1844 (2008).

United Nations S/2012/8

Security Council

Distr.: General
9 January 2012

Original: English

Letter dated 6 January 2012 from the Secretary-General addressed to the President of the Security Council

I have the honour to transmit the attached note verbale transmitted to me by the Registrar of the International Criminal Court (see annex), and its enclosures.

The letter of 13 December 2011 (enclosure I), signed by Sang-Hyun Song, President of the International Criminal Court, refers to the Security Council a finding, pursuant to article 87(7) of the Rome Statute, of a failure by the Republic of Chad to cooperate with the Court and accordingly transmits the decision of Pre-Trial Chamber I, also of 13 December 2011, entitled "Décision rendue en application de l'article 87-7 du Statut de Rome concernant le refus de la République du Tchad d'accéder aux demandes de coopération délivrées par la Cour concernant l'arrestation et la remise d'Omar Hassan Ahmad Al Bashir" (enclosure II).

The Registrar, pursuant to article 17(3) of the Relationship Agreement between the United Nations and the Court, submits the letter and the decision for onward transmission to the Council.

I should be most grateful if you would bring the present letter and its annex and enclosures to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

12-20330 (E) 160112 170112

Please recycle

Annex

Note verbale dated 13 December 2011 from the Registrar of the International Criminal Court addressed to the Secretary-General

The Registrar of the International Criminal Court has the honour to transit for onward transmission to the Security Council, in accordance with article 17(3) of the Negotiated Relationship Agreement between the International Criminal Court and the United Nations, the letter signed by the President of the Court, on 13 December 2011, by which the President refers to the Security Council a finding, pursuant to article 87(7) of the Rome Statute, of a failure by the Republic of Chad to cooperate with the Court.

Should you have any questions or require additional information, you are invited to contact Alexander Khodakov, Special Adviser on External Relations and Cooperation, by e-mail (alexander.khodakov@icc-cpi.int), by telephone (+31 70 515 8662) or by fax (+31 70 515 8567, or Anne-Aurore Bertrand, Cooperation Adviser, Office of the Registrar, by e-mail (anneaurore.bertrand@icc-cpi.int) or by telephone (+31 70 515 8202).

Enclosure I

Please be informed that Pre-Trial Chamber I of the International Criminal Court, acting in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, has found, in accordance with articles 86, 87(7) and 89 of the Rome Statute of the International Criminal Court, that the Republic of Chad has failed to comply with a request to cooperate, thereby preventing the Court from exercising its functions and powers.

Pursuant to regulation 109(4) of the Regulations of the Court, I hereby refer the matter to you and transmit the decision of Pre-Trial Chamber I.

(*Signed*) Sang-Hyun **Song**

Enclosure II

Cour Pénale Internationale

International Criminal Court

Original: French

No.: ICC 02/05-01/09
Date: 13 December 2011

PRE-TRIAL CHAMBER I

Before:

Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

Public Document

Decision Pursuant to article 87(7) of the Rome Statute on the Failure by the Republic of Chad to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir

Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor
Mr. Luis Moreno-Ocampo, Prosecutor
Ms. Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparation

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representatives
Competent authorities of the Republic of Chad

Amicus Curiae

Others
The President of the Court

REGISTRY

Registrar
Ms. Silvana Arbia

Counsel Support Section

Deputy Registrar
Mr. Didier Preira

Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section

Others

Pre-Trial Chamber I of the International Criminal Court (the "Chamber" and the "Court", respectively) hereby issues the present decision on the failure by the Republic of Chad to comply with the cooperation requests issued by the Court for the arrest and surrender of Omar Hassan Ahmad Al Bashir ("Omar Al Bashir").

Background and submissions by the Republic of Chad

1. Where applicable to the present case, the Chamber refers to the background on the case contained in its "Decision Pursuant to article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir" (the "Decision concerning Malawi").

2. On 6 March 2009 and on 21 July 2010, respectively, the Registry sent, at the Chamber's request, the "Request to all States Parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir",[1] and the "Supplementary request to all States parties to the Rome Statute for the arrest and surrender of Omar Hassan Ahmad Al Bashir"[2] (the "Cooperation Requests"). The Republic of Chad has been a party to the Rome Statute since 1 January 2007 and was therefore notified of the Cooperation Requests. It had previously allowed Omar Al Bashir to enter its territory from approximately 21 to 23 July 2010 without arresting him. The Chamber informed the Security Council of the United Nations and the Assembly of States Parties of this visit in a decision issued on 27 August 2010.[3]

3. In its Report on the second visit of Omar Al Bashir to Chad of 9 August 2011 ("the First Report of the Registry"),[4] the Registry informed the Chamber that, according to information reported in the media, Omar Al Bashir had visited Chad on 7 and 8 August 2011 to attend the inauguration ceremony of the Head of State of Chad, Idriss Deby Itno. On 5 August 2011, by note verbale contained in the annex to the First Report of the Registry, the Registrar reminded the Republic of Chad of its "obligation to arrest and transfer to the Court persons who are subject to an arrest warrant issued by the International Criminal Court, an obligation which applies to all persons subject to an arrest warrant issued by the Court, including President Al Bashir".[5]

4. On 18 August 2011, the Chamber issued its Decision requesting observations about Omar Al Bashir's recent visit to the Republic of Chad,[6] in which it called upon the relevant authorities of the Republic of Chad to submit, no later than Friday, 9 September 2011, any observations on the First Report of the Registry, in particular with regard to their alleged failure to comply with the Cooperation Requests issued by the Court.

5. In its Report of the Registry concerning the observations of the Republic of Chad, filed confidentially on 9 September 2011 ("the Second Report of the Registrar"),[7] the Registrar informed the Chamber that (i), the Embassy of Chad in Brussels had submitted the observations of the Minister for Foreign Affairs to the

[1] ICC-02/05-01/09-7-tFRA.
[2] ICC-02/05-01/09-96-tFRA.
[3] ICC-02/05-01/09-109-tFRA.
[4] ICC-02/05-01/09-131-Conf.
[5] ICC-02/05-01/09-131-Conf, annex 2.
[6] ICC-02/05-01/09-132-tFRA-Corr.
[7] ICC-02/05-01/09-133-Conf.

Registry on 7 September 2011; (ii) that the Republic of Chad's observations had, however, proved to be in reference to the Registrar's note verbale of 5 August 2011 transmitted in advance of Omar Al Bashir's visit to Chad and not to the Decision of the Chamber of 18 August 2011; (iii) and that, on 9 September 2011, the authorities of the Republic of Chad had indicated informally that they sought an extension of the time limit to respond to the 18 August 2011 Decision of the Chamber.

6. On 21 September 2011, the Chamber issued its Decision amending the time limit for the submission of observations on Omar Al Bashir's recent visit to the Republic of Chad,[8] in which it decided to extend until 30 September 2011 the time limit for the competent authorities of the Republic of Chad to submit their observations.

7. On 30 September 2011, the Registry submitted under the heading 'public' its Report of the Registry on the observations of the Republic of Chad,[9] which included a public annex. In this annex, entitled "Observations of the Republic of Chad", the Republic of Chad submitted the following observations:

> *"Recalling article 87(1) and its subparagraphs on cooperation requests and legal assistance,*
>
> *Considering the common position adopted by the African Union with respect to the international arrest warrant for Omar Al Bashir issued by the Prosecutor,*
>
> *Also considering that, in this instance, as [the Republic of Chad] is a member of the African Union, the Prosecutor's request cannot be fulfilled in the Republic of Chad, and that, in accordance with regulation 109-3 of the Regulations of the Court, the Republic of Chad must have the opportunity to be heard;*
>
> *Therefore [concludes] that the provisions of article 87(7) of the Statute, referred to in report no. ICC-02/05-01/09 of 18 August 2011, which read: 'Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council', are not applicable."*[10]

Applicable Law and Discussion

8. The Chamber notes articles 13, 21, 27, 86, 87, 89 and 119 of the Statute and rule 195 of the Rules of Procedure and Evidence (the "Rules").

9. As a preliminary matter, the Chamber notes that, although they received a warning by the Registry prior to the visit of Omar Al Bashir, the authorities of the Republic of Chad decided neither to respond to the Court nor to arrest the suspect. This indicates to the Chamber that the Republic of Chad did not respect its obligation, enshrined in article 86 of the Statute, to fully cooperate with the Court.

[8] ICC-02/05-01/09-134.

[9] ICC-02/05-01/09-135, with public annex 1.

[10] ICC-02/05-01/09-135, annex 1, p. 3.

10. The Republic of Chad did not respect the sole authority of this Court to decide whether immunities are applicable in a particular case. This is established by article 199(1) of the Statute, which provides that "[A]ny dispute concerning the judicial functions of the Court shall be settled by the decision of the Court". Moreover, rule 195(1) states:

> *When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the requested State shall provide any information relevant to assist the Court in the application of article 98. Any concerned third State or sending State may provide additional information to assist the Court.*

11. Therefore the Chamber concludes that, in this respect, the Republic of Chad did not cooperate with the Court in order to resolve the issue. The Republic of Chad should have brought the matter to the attention of the Chamber, together with any available information, in order for the Chamber to make its determination.

12. That said, due to the significance of the issues before the Court, the Chamber will decide the issue of Chad's non-cooperation on the merits. The Republic of Chad does not indicate to which position of the African Union it alludes, but various resolutions of the African Union have prohibited its members from cooperating with the Court with respect to the warrant for the arrest of Omar Al Bashir.[11] The sole legal justification the African Union gives for why its legal position is compatible with the Statute is by reference to "the provisions of article 98 of the Rome Statute of the International Criminal Court relating to immunities".[12] The Chamber considers the specific provision referenced by the African Union to be article 98(1) of the Statute.

13. The Chamber notes that the Republic of Malawi has also invoked this position of the African Union to explain its failure to arrest Omar Al Bashir. In the Decision concerning Malawi, the Chamber concluded that the Republic of Malawi and the African Union were not entitled to rely on article 98(1) of the Statute. In the present case, the Chamber incorporates the conclusions set forth in the relevant paragraphs of the Decision on Malawi,[13] specifically:

> "*36. [...] Therefore, the Chamber finds that the principle in international law is that immunity of either former or sitting Heads of State can not be invoked to oppose a prosecution by an international court. This is equally applicable to*

[11] African Union, Assembly, Decision on the Report of the Meeting of African States Parties to the Rome Statute of the International Criminal Tribunal (ICC) - Doc. Assembly/AU/13(XIII), 3 July 2009, Assembly/AU/Dec.245(XIII) Rev.1 ("3 July 2009 AU Decision"), para. 10; African Union, Assembly, Decision on the Progress Report of the Commission on the Implementation of Decision Assembly/AU/Dec.270(XIV) on the Second Ministerial Meeting on the Rome Statute of the International Criminal Court (ICC) - Doc. Assembly/AU/10(XV), 27 July 2010, Assembly/AU/Dec.296(XV), paras. 5-6; African Union, Assembly, Decision on the Implementation of the Decisions on the International Criminal Court (ICC) Doc. EX/CL/639(XVIII), 30-31 January 2011, Assembly/AU/Dec.334(XVI), para. 5; African Union, Assembly, Decision on the Implementation of the Assembly Decisions on the International Criminal Court-Doc.EX.CL/670(XIX), 30 June-1 July 2011, Assembly/AU/Dec.366(XVII) ("30 June-1 July 2011 AU Decision"), para. 5.

[12] 3 July 2009 AU Decision, para. 10; 30 June-1 July 2011 AU Decision, para. 5.

[13] Decision on Malawi, paras. 22 to 43.

former or sitting Heads of States not Parties to the Statute whenever the Court may exercise jurisdiction. [...]

37. *The Chamber notes that there is an inherent tension between articles 27(2) and 98(1) of the Statute and the role immunity plays when the Court seeks cooperation regarding the arrest of a Head of State. The Chamber considers that Malawi, and by extension the African Union, are not entitled to rely on article 98(1) of the Statute to justify refusing to comply with the Cooperation Requests.*

38. *First, [...] immunity for Heads of State before international courts has been rejected time and time again dating all the way back to World War I.*

39. *Second, there has been an increase in Head of State prosecutions by international courts in the last decade. Only one international prosecution of a Head of State had been initiated when the judgment in the "Arrest Warrant Case" was rendered; this trial (Slobodan Milosevic) began only two days before this judgment was issued and its existence is not even referenced by the [International Court of Justice] majority. Subsequent to 14 February 2002, international prosecutions against Charles Taylor, Muammar Gaddafi, Laurent Gbagbo and the present case show that initiating international prosecutions against Heads of State have gained widespread recognition as accepted practice.*

40. *Third, the Statute now has reached 120 States Parties in its 9 plus years of existence, all of whom have accepted having any immunity they had under international law stripped from their top officials. All of these States have renounced any claim to immunity by ratifying the language of article 27(2): '[i]mmunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising jurisdiction over such a person.' Even some States which have not joined the Court have twice allowed for situations to be referred to the Court by United Nations Security Council resolutions, undoubtedly in the knowledge that these referrals might involve prosecution of Heads of State who might ordinarily have immunity from domestic prosecution.*

41. *Fourth, all the States referenced above have ratified this Statute and/or entrusted this Court with exercising 'its jurisdiction over persons for the most serious crimes of international concern.' It is facially inconsistent for Malawi to entrust the Court with this mandate and then refuse to surrender a Head of State prosecuted for orchestrating genocide, war crimes and crimes against humanity. To interpret article 98(1) in such a way so as to justify not surrendering Omar Al Bashir on immunity grounds would disable the Court and international criminal justice in ways completely contrary to the purpose of the Statute Malawi has ratified.*

42. *The Chamber considers that the international community's commitment to rejecting immunity in circumstances where international courts seek arrest for international crimes has reached a critical mass. If it ever was appropriate to say so, it is certainly no longer appropriate to say that customary international law immunity applies in the present context.*

43. *[...] the Chamber finds that customary international law creates an exception to Head of State immunity when international courts seek a Head of*

State's arrest for the commission of international crimes. There is no conflict between Malawi's obligations towards the Court and its obligations under customary international law; therefore, article 98(1) of the Statute does not apply."

14. The Chamber is of the view that the Republic of Chad cannot invoke article 98(1) to justify its failure to comply with the Cooperation Requests. The Chamber therefore finds, in accordance with article 87(7) of the Statute, that the Republic of Chad has failed to comply with the Cooperation Requests contrary to the provisions of the Statute and has thereby prevented the Court from exercising its functions and powers under this Statute. The Chamber decides to refer the matter both to the Security Council of the United Nations and to the Assembly of States Parties.

FOR THESE REASONS, THE CHAMBER

FINDS, in accordance with articles 86, 87(7) and 89 of the Statute, that the Republic of Chad: (i) failed to comply with its obligations to consult with the Chamber by not bringing the issue of Omar Al Bashir's immunity to the Chamber for its determination and (ii) failed to cooperate with the Court by failing to arrest and surrender Omar Al Bashir to the Court, thus preventing the Court from exercising its functions and powers under the Statute; and

NOTIFIES, in accordance with regulation 109-4 of the Regulations of the Court, the President of the Court of this decision so that he may transmit it to the Security Council through the Secretary-General of the United Nations and to the Assembly of States Parties.

Done in both English and French, the French version being authoritative.

(*Signed*) **Judge Sanji Mmasenono Monageng**
Presiding Judge

(*Signed*) **Judge Sylvia Steiner** (*Signed*) **Judge Cuno Tarfusser**

Dated on 13 December 2011

At the Hague, The Netherlands